

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 Southwire Company, et al.
4 Plaintiffs,

5 v.

6 Ramallo Bros. Printing, et al.,
7 Defendants.

Civil No. 03-1100 (GAG)

8 **OPINION AND ORDER**

9 This matter is before the court on defendant's motion to dismiss plaintiffs' third amended
10 complaint (Docket No. 160). This action was brought by plaintiffs, Southwire Company, Southwire
11 International Corporation, and Heptagon, Limited (jointly hereinafter "Southwire") against Ramallo
12 Brothers Printing Inc., Ramallo Screws and Bolts, Inc., Ramallo Casting Inc., amongst others
13 (hereinafter "defendants"), and arises out of contamination discovered on Southwire's property.

14 For more than a decade, defendants allegedly conducted illegal waste disposal activities on
15 Southwire property in Canovanas, Puerto Rico. See Docket No. 150, ¶¶ 20, 30. Once Southwire
16 discovered the contamination, it voluntarily undertook an investigation into the nature and extent
17 of the contamination. Id. at ¶¶ 32-35. The investigation revealed that the soil and groundwater
18 under the property were contaminated with solvents and heavy materials. Id. Defendants were given
19 notice. Id. at ¶ 40. Given the situation, the U.S. Environmental Protection Agency ("EPA")
20 determined that the conditions of the property constituted an actual or threatened release of
21 hazardous substances from defendants' facility. Id. at ¶ 42. Southwire and the EPA entered into an
22 "Administrative Order on Consent" ("AOC") in order to execute a clean-up plan. Id. Southwire
23 brought forth the action against defendants to recoup cleanup costs incurred.

24 In ruling upon a motion to dismiss, the court must apply the notice pleading requirements
25 set forth under Fed.R.Civ.P. 8(a)(2). Under this rule, the complaint need only include a short and
26 plain statement of the claim showing that the pleader is entitled to relief. See Rivera v. Rhode
27 Island, 402 F.3s 27, 33 (1st Cir. 2005). The court must take the allegations in the plaintiff's
28 pleadings as true and must make all reasonable inferences in favor of the plaintiff. Id. at 33.

Civil No. 03-1100 (GAG)

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1 In this case, plaintiffs' third amended complaint is sufficiently well-pled as to pass 12(b)(6)
2 muster. First, defendants allege that plaintiffs lack a cause of action under the Comprehensive
3 Environmental Response, Compensation and Liability Act ("CERCLA") because Southwire was not
4 sued as a result of the contamination and because Southwire did not enter into a proper AOC as
5 required by the statute. In the light most favorable to plaintiff, a review of the complaint and the
6 documents attached to the motion¹ reveal that plaintiffs have sufficiently laid out a case under the
7 CERCLA provisions listed in the complaint – specifically, 42 U.S.C. §§ 9613 (f)(1), 9613 (f)(3)(B),
8 9613 (g)(2), 9607(a)(2), 9607(a)(3), and 9607 (a)(4)(B). See Docket No. 150, ¶¶ 53-58, 61-64.

9 Second, defendants also argue that plaintiffs lack a cause of action under the Resource
10 Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972. Specifically, defendants argue that
11 Southwire is not entitled to any injunctive relief under the statute. However, the definitions in the
12 statute do not preclude Southwire's claims as addressed in their complaint. See Docket No. 150, ¶¶
13 66-73.

14 Finally, defendants argue that Southwire's sixth cause of action for tort should be dismissed.
15 The court agrees. On August 24, 2005, the court issued an order and partial judgment dismissing
16 Southwire's tort claim contained in the fifth cause of action of the second amended complaint. See
17 Docket No. 112. The two causes of action are analogous. See Docket No. 37, ¶¶ 80-84 & Docket
18 No. 150, ¶¶ 86-90. Therefore, Southwire's sixth cause of action in its third amended complaint is
19 stricken.

20 Thus, for the foregoing reasons, defendants' motion to dismiss is **DENIED** (Docket No.
21 160), and Southwire's Sixth Cause of Action is stricken from the third amended complaint as it has
22 already been ruled on.

23 **SO ORDERED.**

24 In San Juan, Puerto Rico this 22nd day of December 2006.

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26 ¹ The documents attached to the motion are within the exceptions for a motion to dismiss.
27 See Watterson v. Page, 987 F.2d 1, 3 (1993) (finding that the exceptions include documents the
28 authenticity of which are not disputed by the parties; documents that are official public records;
documents central to plaintiffs' claim; or documents sufficiently referred to in the complaint).

Civil No. 03-1100 (GAG)

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/s/ Gustavo A. Gelpi

GUSTAVO A. GELPI
United States District Judge

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